



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Emprise Corporation
File: B-225385
Date: February 26, 1987

DIGEST

Agency's rejection of offeror's proposal as technically unacceptable and therefore not in the competitive range was reasonable where the offeror proposed numerous alternatives to solicitation requirements but failed to provide sufficient support in the proposal to justify the quantity or scope of the alternatives proposed.

DECISION

Emprise Corporation protests the award of a contract by the U.S. Army's Armament, Munitions & Chemical Command, Dover, New Jersey, to BBC Brown-Boveri Inc. under request for proposals (RFP) No. DAAA21-86-R-0034. We deny the protest in part and dismiss it in part.

BACKGROUND

The RFP solicited offers to supply an automatic test stand module assembly. The required system will be used to test the AGT-1500 gas turbine engine used in the M-1 tank. The solicitation stated that the agency would evaluate proposals based on three major factors--technical, management, and operations cost--and that, based on these factors, the agency would rate each proposal as either technically acceptable or technically unacceptable. According to the solicitation, the contracting officer then would establish a "zone of consideration" consisting of all proposals having a reasonable chance for award, and would conduct negotiations on those proposals. The RFP provided for award of a firm, fixed-price contract to the lowest priced offeror having a technically acceptable proposal.

Following the receipt of initial proposals the contracting officer arranged for technical evaluations of the four proposals received, as well as for audits of the offerors' costs. In addition, the contracting officer requested a

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pre-award survey of Emprise because its experience appeared to consist primarily of "paper studies," with no relevant "hand-on" experience.

The technical evaluators determined that the Emprise proposal was technically unacceptable. The proposal received 45 points out of a possible 100; the other three proposals received technical scores of 92, 87, and 85. The evaluators noted a number of technical deficiencies in the Emprise proposal, the details of which are discussed below. The agency notified Emprise by letter dated August 29, 1986, that since the technical evaluation showed noncompliance with solicitation requirements, the proposal was not in the competitive range. After an exchange of letters concerning a debriefing, a representative from Emprise called the agency on October 2 and asked for a listing of the areas in which its proposal was found to be deficient. The protester prepared and has submitted to this Office a memorandum of that telephone conversation indicating that the agency identified 11 areas in the Emprise proposal believed deficient in some respect. Emprise filed a protest with this Office on October 16.

Emprise bases its protest on four^{1/} specific grounds: (1) Emprise submitted the lowest offer, (2) the firm was not informed prior to negotiations that its proposal was technically unacceptable, (3) the agency needlessly required Emprise to undergo a Defense Contract Audit Agency (DCAA) audit, and (4) the agency's technical evaluation of the Emprise proposal was inaccurate and biased. Of these, the protester contends (and we agree) that the propriety of the agency's technical evaluation is the most important issue.

ANALYSIS

The evaluation of proposals and the resulting determination as to whether an offeror is in the competitive range are matters within the discretion of the contracting activity, since it is responsible both for defining its needs and for deciding on the best methods of accommodating them. Harbert International, Inc., B-222472, July 15, 1986, 86-2 CPD ¶ 67. Generally, offers that are unacceptable as submitted and would require major revisions to become acceptable are not

^{1/} Emprise initially raised six grounds for its protest, but withdrew two of these after receiving the agency's report on the protest.

for inclusion in the competitive range. Essex Electro Engineers, Inc., et al., B-211053.2, et al., Jan. 17, 1984, 84-1 CPD ¶ 74. Further, in reviewing an agency's evaluation we will not reevaluate the technical proposals, but instead will examine the agency's evaluation to ensure that it had a reasonable basis and did not constitute a violation of procurement statutes or regulations. Syscon Corp., B-208882, Mar. 31, 1983, 83-1 CPD ¶ 335.

We have reviewed the protester's technical proposal as well as the conclusions and recommendations of the agency's technical evaluators. Discussed below are examples of the deficiencies noted by the evaluators. It appears that most of the deficiencies involved areas in which the protester proposed alternate approaches which the agency viewed as deviating from solicitation requirements. In several instances, the agency's conclusion was based in large part on Emprise's failure to provide sufficient explanatory material with the proposal. Moreover, while the solicitation provided that the government would consider alternatives to the methods specified in the RFP, we do not think this provision contemplated alternatives of the quantity or scope offered by Emprise. Overall, we have no basis to question the agency's conclusion that the protester's proposal was technically unacceptable and its resulting decision to exclude the protester from the competitive range.

Dynamometer

The solicitation required the test stand to have a water brake, absorption dynamometer. A dynamometer is a device for absorbing and measuring power from another device, in this case the AGT-1500 engine. In a water brake type dynamometer the heat energy absorbed is dissipated in water, causing the temperature of the water to rise. In a conventional water brake dynamometer--the type contemplated by the solicitation--the water then is cooled by a circulation process. The protester proposed a steam dynamometer in which the water would be allowed to boil, with the steam then condensing in an air-cooled heat exchanger. The evaluators cited a lack of data in the Emprise proposal and the need to change test procedures as reasons for downgrading the proposal on this point.

Emprise contends that its steam dynamometer would function just as well as the conventional water brake dynamometer. The protester also contends that test procedures for the AGT-1500 engine would remain unchanged. In this regard,

the protester states that the manufacturer of that engine (who authored the test procedures) has purchased a steam dynamometer for its own use and has stated that the device is suitable for testing any of the turboshaft engines it manufactures.

Upon review of the protester's proposal, we do not necessarily agree with the agency's statement that the proposal "does not present supporting data." While, as the agency notes, the proposal does contain a graph without legends, thus rendering the graph relatively useless, the proposal also contains some 20 pages of explanatory material on the proposed steam dynamometer. Therefore, were the alleged lack of data on the proposed dynamometer the sole reason for downgrading the protester's proposal in this area, the agency's evaluation might be subject to question. It appears, however, that the overriding concern of the evaluators was the issue of how a steam dynamometer would perform the specific task required, i.e., testing the AGT-1500 engine. According to the agency, the established engine-testing procedures envision use of a conventional water brake dynamometer, and the use of a steam dynamometer would require a substantial effort on the part of the government to ensure that test data would not be affected by the use of different equipment. While the protester believes that no changes to the test procedures would be required, it has not shown that the concerns of the evaluators in this regard were unreasonable. The protester states that the AGT-1500 engine manufacturer does not think there would be a problem, but the proposal contains no support for this statement. We therefore have no basis upon which to question the agency's determination that the protester's proposal failed to show that the proposed alternative equipment would be suitable for the required application.

Factory test requirement

Emprise contends that the pivotal issue in this case involves the solicitation's requirement for factory testing. The firm contends that its approach to this requirement is responsible for much of the cost savings contained in its proposal.

The solicitation provided that prior to shipment of the test system, the contractor would be required to conduct a demonstration test of the system. Upon successful completion of this test, the government would give approval for shipment. Final testing and acceptance would occur at the government installation. Emprise stated in its proposal that it did

not intend to conduct a factory demonstration of its test system. According to the proposal, the reasons for this were that Emprise does not have a factory and that the firm has been unable to resolve the liability and security problems involved in handling a government-furnished test engine. The agency's evaluators thus noted that the Emprise proposal failed to meet the solicitation's factory testing requirement.

Emprise admits that its proposal did not comply with the RFP's factory testing requirement. The protester has argued at length, however, concerning the advantages of testing at the government installation rather than at the contractor's facility, as required. In particular, Emprise notes that factory testing means greater costs for the contractor. In the protester's view, the requirement for factory testing is unreasonable. In our view, the protester is complaining now about a solicitation requirement that was apparent from the face of the solicitation. Its objections now to that requirement are untimely. Our Bid Protest Regulations provide that protests based upon alleged solicitation improprieties that are apparent prior to the closing date for receipt of initial proposals must be filed prior to that time. 4 C.F.R. § 21.2(a)(1) (1986). Emprise did not protest the factory testing requirement until after it learned that the agency had rejected its proposal as technically unacceptable. We dismiss this aspect of the protest. Tom Hoch Interior Designs, Inc., B-224291, Sept. 18, 1986, 86-2 CPD ¶ 321.

Site Work

The Emprise proposal listed a number of items and services that would be the government's responsibility to provide. Most of the entries tracked the solicitation's provisions, but the proposal also listed the following: "All site work including concrete slab, equipment foundations, anchors, grounding loop, and stub ups for utilities where required." The protester contends that the solicitation does not require such site work and that agency personnel so informed it during a pre-closing date site visit.

The solicitation provides that the contractor will install the test stand and that all "commissioning" tasks, including labor and material, will be provided by the contractor. The solicitation provides further that the contractor will be responsible for stable operation of the test stand as an integrated system. Finally, the RFP provides that the

contractor shall supply a remotely located and bunded fuel tank.^{2/} In our view, the only reasonable reading of the solicitation is that the contractor must perform the site work necessary to install and stabilize the test stand along with the fuel tank. Emprise included none of this work in its proposal. With respect to what was said during the site visit, the agency denies that the protester was informed that the government would be responsible for site work, and the protester's own notes indicate that the agency's representative merely stated that the government planned on paving the gravel parking lot where the test stand would be located.

Other issues

The evaluators noted a number of other deficiencies or weaknesses in Emprise's proposal. For example, the solicitation required a match plate coupling system for making the many connections that would be required between the test engine and the test stand assembly. Emprise did not offer a match plate system, but offered instead either a system involving individual connections or, as an alternative, a multipoint system. The protester also offered an alternative approach to measuring the flow of oil to the test engine. In both of these instances, as well as in a number of other areas, the evaluators declined to accept the protester's alternative approaches because either the proposal did not contain sufficient documentation to support the alternatives or the agency's technical personnel previously had considered and rejected the approach proposed. While the protester continues to believe that its alternative approaches have merit, those judgments are for the contracting agency to make, and a protester's mere disagreement with the agency does not make the agency's evaluation unreasonable. Harbert International, Inc., B-222472, supra.

Further, Emprise received comparatively lower scores under the management evaluation factor, primarily because the firm appeared to lack experience in the work required. The evaluators noted in particular that Emprise planned to subcontract much of the work. The protester's lack of experience and in-house capability also become evident, says the agency, during its analysis of the protester's proposed staff hours. The proposed engineering hours appeared to be unrealistically

^{2/} A bunded fuel tank is one which is surrounded by a dam or trench to contain any fuel spill.

low, while the hours for field installation, commissioning and training were well over the government's estimate. The protester says that it disagrees with the agency's judgments in these areas, but again, a protester's mere disagreement with an agency's evaluation is insufficient. Harbert International Inc., B-222472, supra.

Although Emprise may have offered to perform the contract at the lowest cost to the government, it also submitted what the agency determined was a technically unacceptable proposal. In this respect, once a proposal is properly determined to be outside the competitive range as a result of the technical evaluation, the offeror's potentially lower price is irrelevant since an offer not within the competitive range cannot be considered for award. Proffitt and Fowler, B-219917, Nov. 19, 1985, 85-2 CPD ¶ 566.

The protester complains that DCAA conducted its audit more than 1 month after the Army had determined that the protester's proposal was technically unacceptable. The protester speculates that the purpose of the audit therefore might have been simply to find additional reasons to reject the proposal, which would allow the Army to avoid rejecting the proposal on technical grounds. While the agency does not explain its timing of the audit, we see no merit to the protester's claim since it appears the agency had ample reason to find Emprises' proposal technically unacceptable.

Finally, the protester complains that the agency's notice to it that its proposal had been rejected was not timely. The protester contends that more timely notice would have allowed the protester time to cure any perceived deficiencies. In this respect, the Federal Acquisition Regulation, 48 C.F.R. § 15.1001(b)(1) (1986), requires a contracting officer promptly to notify an offeror whose proposal is considered unacceptable, but also provides that the notice must state that a revision of the proposal will not be considered. Thus, even if the agency could have notified Emprise earlier that its proposal was unacceptable, this would not have afforded the firm any opportunity to improve its proposal.

The protest is denied in part and dismissed in part.

for *Signature*
Harry R. Van Cleve
General Counsel